HIGH COURT OF CHHATTISGARH, BILASPUR

S.A. No. 60 of 2003

Single Bench: Hon'ble Shri Dilip Raosaheb Deshmukh, J.

Applicants	: 1.	Smt. Gayatri Devi Agrawal, widow of late Lakheshwar Prasad, aged about 55 yrs. R/o Shivarinarayan, Distt. Janjgir Champa.
	: 2.	Ayush Kumar (minor son) late Lakheshwar Prasad, aged about 11 years, R/o Shivrinarayan Distt. Janjgir-Champa (C.G.)
		Vs.
Respondents Plaintiff	: 1.	Nand Kishore son of Mohan Lal Gupta, aged about 64 years, R/o Kharora, Tahsil – Baloda Bazaar, Distt – Raipur.
Defendants	: 2.	Suresh son of Mohan Lal, aged about 59 years.
	: 3.	Kamla Bai widow of Hari Kishan, aged about 64 years.
	: 4.	Prabhakar S/O Hari Kishan, aged about 47 years.
	: 5.	Praful, S/o Hari Kishan, aged about 43 years.
	: 6.	Praveen S/O Hari Kishan, aged about 28 years.
	: 7.	Vishnu, S/o Hari Kishan, aged about 28 years.
	: 8.	Radhe S/o Hari Kishan, aged about 25 years.
		All residents of Mahantpara, Shivrinarayan, Tah-Navagarh, District-Janjgir-Champa (C.G.)
	: 9.	State of Chhattisgarh acting through Collector, Janjgir – Champa (C.G.)

SECOND CIVIL APPEAL UNDER SECTION 100 OF CIVIL PROCEDURE CODE

Present:
Shri K. A. Ansari, Sr. Advocate with Shri Sayed Imtiyza Ali, Counsel for the appellants.
Shri Rajeev Shrivastava, Counsel for the respondent No.1 on caveat.
Shri Akhil Agrawal, P.L. for the State/respondent No.9.

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ORDER
(Passed on 10.05.2007)

Heard on admission.

2. There is a concurrent finding recorded by both the Courts below that the transaction dated 28.10.1974 was a nominal transaction and that the respondent No.1/plaintiff had in fact obtained a loan from the appellant/defendant Lakheshwar Prasad while executing the document. Both the Courts below have also recorded a concurrent finding that the appellant/defendant herein had failed to prove perfection of title over the suit land by adverse possession. The findings mentioned above recorded by both the Courts below are purely findings of fact based on proper appreciation of evidence oral as well as documentary on record.

3. Shri K. A. Ansari, learned Sr. Advocate for the appellant/defendant contended that since no issue was framed by the trial Court on the nature of the transaction dated 28.10.1974 or on the question of adverse possession of the appellant/defendant, the judgment and decree was liable to be set aside and the matter remanded to the trial Court for framing of issue. However, from a perusal of the record, it is clear that the parties went to trial fully knowing the rival case relating to the nature of the transaction dated 28.10.1974 as also the question of adverse possession raised by the appellant/defendant and had led all the evidence not only in support of their contentions but in refutation of those to the other side. In such a situation, it cannot be said that the absence of an issue was fatal to the case or that the trial was vitiated. Placing reliance on ***Nedunuri Kameswaramma v. Sampati Subba Rao*** **AIR 1963 SC 884,** I am of the considered opinion that absence of issue is not fatal to the case in the aforesaid situation.

5. In this manner, I am of the considered opinion that no substantial question of law arises for determination in this appeal which is accordingly dismissed at the stage of admission. "There shall be no order as to costs".

Sd/-
Dilip Raosaheb Deshmukh
Judge